

Message Text

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ACTION NEA-10

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INFO SECSTATE WASHDC 5686
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AMEMBASSY TEL AVIV
AMEMBASSY TRIPOLI
AMEMBASSY TUNIS

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E.O. 11652: NA
TAGS: BENC, BGEN, TC
SUBJ: CONTRACTING RULES, PRACTICES AND BARGAINING TECHNIQUES IN DUBAI.

REF: 76 STATE A-5955

SUMMARY: FOLLOWING RESPONSES (KEYED TO REFAIR) COVER
DUBAI. DUBAI IS ENJOYING A BOOM IN CONSTRUCTION. DUBAI IS
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A VERY DIFFERENT MARKET THAN ABU DHABI, AND THE COMMENTS
WHICH FOLLOWIN DEAL WITH THE PRACTICES OF THE GOVERNMENT OF
DUBAI. THESE DIFFER FROM THE PRACTICES OF THE FEDERAL
GOVERNMENT OF THE UNITED ARAB EMIRATES OR THE ABU DHABI
GOVERNMENT. THE PACE OF DEVELOPMENT IN DUBAI IS RAPID
AND A THOROUGH GRASP OF THE LOCAL COMMERCIAL AND
POLITICAL SCENE IS NECESSARY FOR SUCCESS.

PROJECTS IN DUBAI ARE RARELY TENDERED AND ARE GENERALLY NEGOTIATED DIRECTLY. CONTRACTS ARE MOST OFTEN AWARDED TO FIRMS WITH A GOOD LOCAL REPUTATION. THESE FIRMS HAVE NORMALLY BEEN ESTABLISHED IN DUBAI FOR A NUMBER OF YEARS AND HAVE DEVELOPED A CLOSE RELATIONSHIP WITH THEIR CLIENTS.

WORK HAS STARTED ON SOME PROJECTS (FOR EXAMPLE, THE JEBEL ALI PROJECT) AFTER SIGNING OF DOCUMENTS WHICH WERE AGREEMENTS IN PRINCIPLE RATHER THAN DETAILED CONTRACTS. COMPETITION IS FIERCE BOTH IN DESIGN AND CONSTRUCTION, AND LOCALLY ESTABLISHED FIRMS HAVE A GREAT ADVANTAGE DUE TO SIGNIFICANT ROLE THAT LOCAL INFLUENCE AND PRESENCE PLAYS. END SUMMARY.

1. PRICE:

THE GOVERNMENT OF DUBAI GENERALLY INSISTS ON FIXED PRICE BIDS, WITHOUT ESCALATION CLAUSES. RARE NON-PUBLICIZED EXCEPTIONS TO THIS POLICY MAY BE MADE FOR EXTREMELY LARGE INTERNATIONAL CONTRACTORS OR FOR WELL KNOWN LOCAL FIRMS. COST PLUS FEE CONTRACTS ARE AVAILABLE ONLY FOR FEASIBILITY STUDIES AND FOR CONSULTING, NEVER FOR CONTRACTING. CLIENTS (INCLUDING GOVERNMENTS) HAVE NOT AND WILL NOT GUARANTEE THE PRICE OF A COMMODITY FOR THE DURATION OF A CONSTRUCTION CONTRACT. ONE INDUSTRIAL PROJECT HAS BEEN GIVEN A GOVERNMENT GUARANTEE OF A FIXED SUPPLY OF FUEL AT A FIXED PRICE. NO PROVISIONS ARE MADE FOR INCREASED FEES TO PAY FOR DEMURRAGE OR INCREASES IN DEMURRAGE CHARGES. IN A SUPPLY CONTRACT THE CUSTOMER WILL NOT GENERALLY ALLOW AN ESCALATION CLAUSE FOR THE PRICE OF SPARE PARTS.

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GIVEN DUBAI'S FORM OF GOVERNMENT PRIVATE AND PUBLIC SECTORS CANNOT EASILY BE DISTINGUISHED AND THERE IS LITTLE DIFFERENCE IN PRACTICE BETWEEN THE TWO.

2. BID AND PERFORMANCE BONDS:

A FIVE PERCENT BID BOND AND A TEN PERCENT PERFORMANCE BOND ARE UNIFORMLY REQUIRED BY ALL GOVERNMENT CONTRACTING AGENCIES. WHILE -- IN GENERAL -- THESE PERCENTAGES ARE FIXED AND UNNEGOTIABLE, WE KNOW OF SOME CASES IN WHICH A VERY WELL-KNOWN, LOCALLY ESTABLISHED FIRM WON A REDUCTION IN THE AMOUNT OF THEIR BONDS. WITH THAT EXCEPTION, NEITHER BONDS NOR GUARANTEES HAVE VARIED, WHETHER THE BIDDERS HAVE HAD PREVIOUS EXPERIENCE IN THE U.A.E. OR NOT. BOND REQUIREMENTS FOR CONSTRUCTION ARE NOT REDUCED WHEN IN A JOINT VENTURE WITH A LOCAL PARTNER; HOWEVER, A LOCAL PARTNER MAY GET A REDUCTION OF THE 100,000 DIRHAM FEE FOR A FIRM'S ENROLLMENT ON THE COMMERCIAL REGISTER. (ONE DIRHAM EQUALS APPROXIMATELY 26 CENTS). IMPORTED

MACHINERY AND EQUIPMENT CANNOT BE CONSIDERED AS AN OFFSET AGAINST BONDS. ONLY AN UNCONDITIONAL BANK GUARANTEE WHICH CAN BE CALLED AT WILL BY THE TENDERER IS ACCEPTABLE. SURETY BONDS ARE NOT AN ACCEPTABLE SUBSTITUTE.

3. "FORCE MAJEURE":

"FORCE MAJEURE" IS USUALLY DEFINED AS A ACT OF GOD". LABOR DISPUTES AND DELIVERY DELAYS DUE TO PORT CONGESTION ARE NOT CONSIDERED "ACTS OF GOD" AND, THEREFORE, ARE NOT A CIRCUMSTANCE OF "FORCE MAJEURE". THERE MAY BE SCOPE FOR NEGOTIATING THE LANGUAGE OF "FORCE MAJEURE" CLAUSES.

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4. TRAINING

IT IS CUSTOMARY IN TENDERS FOR COMPLICATED EQUIPMENT TO PROVIDE FOR TRAINING OF LOCAL PERSONNEL. THIS

MAY BE DONE IN THE SUPPLIER'S PLANT OR LOCALLY, UPON INSTALLATION. THE PERCENTAGE OF COST THE SUPPLIER IS EXPECTED TO BEAR MAY BE SPECIFIED IN THE TENDER OR MAY BE PART OF THE BID. IN GENERAL, THE SUPPLIER IS EXPECTED TO BEAR THE ENTIRE COST OF SUCH TRAINING. WE KNOW OF INSTANCES WHEN TRAINING EQUIPMENT HAS BEEN IMPORTED AND UNCLASSIFIED

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RE-EXPORTED ON A DUTY FREE-BASIS BY PETROLEUM COMPANIES.

5. FOREIGN AND DOMESTIC WORKERS

IN EFFECT, THERE IS NO LOCAL LABORING CLASS. ALMOST ALL LABOR COMES FROM THIRD COUNTRIES. THEREFORE, NO ONLY IS A CONTRACTOR NOT EXPECTED TO MAINTAIN A CERTAIN LOCAL /EXPATRIATE BALANCE, HE IS RESPONSIBLE FOR HIRING THIRD COUNTRY NATIONALS (USUALLY INDIANS, PAKISTANIS OR IRANIANS), TRANSPORTING THEM TO THE U.A.E., OBTAINING THEIR WORK PERMITS AND VISAS, AND PROVIDING HOUSING AND OTHER NECESSITIES. SOME EMPLOYERS ESTIMATE THAT SUCH LABORERS ARE ONLY ONE-THIRD TO ONE-HALF AS EFFECTIVE AS SIMILAR WORKERS IN THE U.S. HOWEVER, THEIR COST IS ONLY 10-15 PERCENT OF COMPARABLE U.S. LABOR COST. THERE IS AN ADEQUATE SUPPLY OF UNSKILLED LABOR FROM THE SOUTH ASIAN SUBCONTINENT, BUT THE SUPPLY OF SKILLED AND SEMI-SKILLED LABOR IS HOPELESSLY INADEQUATE. UNSKILLED LABOR COMMANDS WAGES OF 25-30 DIRHAMS PER DAY; SEMI-SKILLED LABOR AROUND 50-80 DIRHAMS PER DAY, AND SKILLED LABOR, WHEN AVAILABLE OVER 200 DIRHAMS PER DAY. INCREASINGLY, CONTRACTORS ARE PROVIDING HOUSING, FOOD, CLOTHING, MEDICAL AND DENTAL CARE, AND RECREATIONAL ACTIVITIES FOR THEIR THIRD COUNTRY LABOR FORCE. THERE IS NO LOCAL TAX. PERSONAL EFFECTS MAY BE SUBJECT TO IMPORT DUTIES OF BETWEEN 1 PERCENT AND 3 PER CENT. WHILE OBTAINING WORK AND RESIDENCE PERMITS IS NOT A PROBLEM, THEY ARE NECESSARY AND IN SOME CASES SPECIAL PERSONNEL ("EXPEDITERS") ARE HIRED JUST FOR THAT PURPOSE. THIRD COUNTRY NATIONALS ARE PAID DIRECTLY.

6. ARBITRATION: - SETTLEMENT OF LOCAL CONTRACT DISPUTES IS GENERALLY NEGOTIATED ON AN INDIVIDUAL BASIS. INTERNATIONAL ARBITRATION IS GENERALLY ACCEPTABLE AND IS USUALLY INCLUDED IN MOST MAJOR CONTRACTS. THESE NORMALLY CALL FOR ARBITRATION UNDER THE RULES OF CONCILIATION AND ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE. UNCLASSIFIED

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7. LOCAL AGENTS:

LOCAL AGENTS ARE ALLOWED BUT NOT REQUIRED. HOWEVER, THEY MAY BE HELPFUL IN OBTAINING AND KEEPING CONTACTS WITHIN THE LOCAL BUSINESS COMMUNITY (MANY MEMBERS OF WHICH ALSO SERVE IN THE GOVERNMENT). COMMISSIONS AND FEES ARE A MATTER OF MUTUAL ARRANGMENT. IN GENERAL, THE HIGHER THE POSITION OF THE AGENT, THE MORE CONTACTS HE HAS, THE BETTER BUSINESS HE BRINGS AND THE HIGHER HIS FEES. FIVE PERCENT OF GROSS VALUE OF CONTRACTS IS NOT AN UNUSUAL FIGURE.

8. LOCAL PARTNERSHIPS, CORPORATIONS:

THE ADVANTAGES OF ESTABLISHING A LOCAL PARTNERSHIP OR CORPORATION ARE: (Q) THE DUBAI BUSINESS COMMUNITY THEN FEELS ONE IS SERIOUSLY COMMITTED TO DOING BUSINESS LOCALLY, (2) ONE'S LOCAL AFFILIATE CAN OPEN DOORS TO BUSINESS OF WHICH ONE MIGHT OTHERWISE NOT HEAR, AND (3) THE CONTACTS OF ONE'S LOCAL AFFILIATE MAY BE THE DECIDING FACTOR AS TO WHETHER OR NOT BUSINESS IS PROFITABLE.

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THE DISADVANTAGES ARE THAT EVEN IF ONE IS AFFILIATED
LOCALLY MUCH BUSINESS MAY NOT BE GENERATED UNLESS THE
LOCAL AGENT IS VERY ENERGETIC. SUCH ARRANGEMENTS
HAVE BEEN A MOST IMPORTANT FACTOR, IN THE SHORT TERM AS
TO THE AMOUNT OF BUSINESS WON. TECHNICALLY, ONE DOES NOT
HAVE TO HAVE A LOCAL PARTNER IN DUBAI, BUT, IN
ACTUALITY MOST OF THE MORE SUCESSFUL FIRMS SEEM TO
HAVE ONE. THERE IS NO MINIMUM EQUITY FOS LOCAL
PARTICIPATION IN CORPORATIONS PRESCRIBED BY LAW, AND THE
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ESTABLISHMENT OF A WHOLLY OWNED CORPORATION IS AN
ALTERNATIVE. SOME EXAMPLES OF FOREIGN/LOCAL JOINT
VENTURES ON CURRENT CONSTRUCTION PROJECTS ARE : (1) AHLI-
ALT-SCOTT, (2) ARAB TEC - PLOTTER AND (3) WIMPY - AL FTTAIN.

9. GRADUATED OR ADVANCE PAYMENTS:

THE UNUAL METHOD OF PAYMENT IS A PERCENTAGE OF THE
PROJECT COMPLETED, ON EITHER A MONTHLY OR A QUARTERLY
BASIS. PAYMENTS ARE MADE DIRECTLY AGAINST INVOICES.
THERE ARE USUALLY NO ADVANCE PAYMENTS, BUT THEY MAY ON
OCCASION BE MADE AGAINST A BANK GUARANTEE.

10. LOCAL SUPPLY:

THE GOVERNMENT DOES NOT REPEAT NOT INSIST ON A
FOREIGN CONTRACTOR INCORPORATING LOCAL SUPPLHY INTO HIS
BID. LOCAL SUPPLY MAY BE CONTRACTED SEPARATELY BUT
USUALLY IS INCLUDED IN THE OVERALL CONTRACT. FOR DETAILS
ON EXCALATION, BID AND PERFORMANCE BOND,
FORCE MAJEURE, ETC., SEE PARA THREE ABOVE.

11. BONDED AREAS:

THERE ARE NO KNOWN CASES OF "BONDED AREAS" HAVING
BEEN ARRANGED TO ELIMINATE DELAYS IN PORT. CUSTOMS
CLEARANCES ARE GENERALLY NOT A PROBLEM. THE NEW PORT
AT JEBEL ALI WILL HAVE A CUSTOMS FREE ZONE ASSOCIATED
WITH ITS INDUSTRIAL ZONE.

12. LANGUAGE AND LIMITS OF MEASUREMENT:

THE PREFERRED LANGUAGES FOR BIDS ARE ENGLISH AND
ARABIC. MOST FOREIGH FIRMS USE ENGLISH. BOTH METRIC
AND ENGLISH UNITS OF MEASURE ARE USED.

13. MACHINERY AND EQUIPMENT:

CUSTOMS DUTIES (1 PERCENT - 3 PERCENT) ON MACHINERY, EQUIPMENT, AND SUPPLIES CANNOT NORMALLY BE WAIVED. HOWEVER, ON LARGE GOVERNMENT PROJECTS CUSTOMS DUTIES HAVE BEEN UNCLASSIFIED

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WAIVED AT THE DISCRETION OF THE RULER. USED MACHINERY AND EQUIPMENT NEED NOT BE RE-EXPORTED, AND THERE IS A LOCAL MARKET FOR ITS SALE. THERE IS NO KNOWN PENALTY FOR ABANDONMENT OF EQUIPMENT AND NO MANDATORY FORMULA REGULATING SUPPLY OF SPARE PARTS FOR MACHINERY INSTALLATIONS.

15. NEGOTIABLE CONTRACT CLAUSES:

ALMOST EVERYTHING IS NEGOTIABLE EXCEPT BID AND PERFORMANCE BONDS REQUIREMENTS, LICENSING FORMALITIES, VISA REQUIREMENTS, AND THE REQUIREMENT TO ESTABLISH A LOCAL OFFICE.

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Message Attributes

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